

### **REMARKS**

Reconsideration and allowance of the subject patent application are respectfully requested.

Claim 17 has been amended to depend from claim 1 and withdrawal of the objection to this claim is respectfully requested.

Claims 1-11, 14, 15, 17-21, 23-25, 27 and 37 were rejected under 35 U.S.C. Section 112, second paragraph. According to the office action, the claim elements “an electronic physiological data acquisition unit”, “a data analyzer” and “an automatic message generator” could cover either “software, an algorithm, or some other non-tangible computer media, OR a computer, processor or some form of computer tangible media”, thereby allegedly rendering the claims indefinite.

Applicant traverses the assertion that the rejected claims are indefinite. That a particular claim element may cover different implementations of a particular feature does not render a claim indefinite. As noted in MPEP Section 2173.04, “[b]readth of a claim is not to be equated with indefiniteness.” Applicant respectfully submits that the claims apprise one of ordinary skill in the art of their scope, which is the requirement for compliance with 35 U.S.C. Section 112, second paragraph. As to the patentable weight to be given to the claim elements, Applicant is not aware of any legal basis for ascribing different levels of patentable weight to claim elements based on what they are alleged to cover.

Applicant respectfully traverses the rejection of claims 1-6, 8-11, 14, 15, 18-21, 23-25, 27, 36 and 37 under 35 U.S.C. Section 103(a) as allegedly being made “obvious” by a proposed combination of Walker et al. (U.S. Patent No. 6,302,844) in view of Schulze et al. (U.S. Patent Publication No. 2002/0019584). The system of Walker et al. lacks at least three features of the claims and these missing features are not disclosed in Schulze et al. or any of the other applied prior art.

First, Walker et al. lacks the feature of claim 1 that: “if a connection to the wireless network is unavailable, the electronic physiological data acquisition unit performs the measurement, acquisition and output of data, and the patient-based physiological data acquisition and transmittal device stores the data in the secure data store and automatically transmits the stored data later when a connection to the wireless network is available”.

Regarding this feature, the office action refers to column 4, line 51 of Walker et al. which discloses merely the presence of a data link. The office action also refers to column 5, lines 45-57, but this section of Walker et al. seems to emphasize that Walker et al. precisely does not have the feature above. Column 5, lines 45-57 of Walker et al. disclose that “the physiological information received from the patient is merely converted into a digital information stream, either compressed or uncompressed, and transmitted directly to the central server 200”. There is no discussion here of what happens if a connection to the wireless network is unavailable. Still less is there any disclosure that the transmittal device stores the data in a secure data store and automatically transmits it later when the connection becomes available.

Lines 51-53 of column 5 emphasize the point by saying that:

The data is merely passed to the central server 200 in either a compressed or uncompressed data format as appropriate to, e.g. the format of data link P1.

In fact nowhere in Walker et al. is there any suggestion of this feature of claim 1. For example column 7, lines 47-48 indicate that “[t]he central server 200 receives a continuous signal from each patient” and column 20, lines 34-35 indicate that “[d]ata is sent to the central server 200 as part of a compressed data stream transmitted via a patient telemetry device 120.”

Thus the entire emphasis in Walker et al. is that data is continuously sent and there is no disclosure of the feature of claim 1 mentioned above.

Second, Walker et al. lacks the feature of claim 1 that the “data analyser automatically performs trend analysis with respect to trends tuned to each patient’s characteristics”.

Trend analysis refers to analysis of the behavior of something as a function of time. In other words it is behavior over time (requiring measurement at several different time points), and the subsequent comparison of those several measurements with each other is required.

This is in stark contrast to making a judgment at one point in time as to whether data is above or below a threshold, or whether data at one point in time matches the conditions for an anomaly or not. This is true even if the threshold is adjusted from time to time. The adjustment of the threshold from time to time does not alter the fact that judging data representative of the condition at one point in time against the threshold simply gives an anomalous/non-anomalous result and is not trend analysis.

A simple example makes this clear. One might, for example, judge whether a particular house is expensive. Clearly what is meant by “expensive” will vary over the years and so the judgment criteria would have to be adjusted from time to time. But that is not trend analysis. Trend analysis would be directed at telling you whether house prices are rising or falling. Clearly making a judgment at a particular point in time as to whether a house is expensive or not, is not the same as judging whether house prices are falling or rising (even though the threshold for expensive/not expensive may have been adjusted).

This is the difference between this feature of claim 1 and the system of Walker et al. Walker et al. is always making a threshold judgment to decide whether or not an anomaly is present. It does this by comparing the current data against some judgment criterion. The judgment criterion is referred to in Walker et al. as a “data template” (see column 3, line 63). Even though the template might be adjusted from time to time because the condition of the patient changes, the judgment which is being made is still a basic threshold judgment of whether an anomaly is present or not. It is not a trend analysis. It is still a judgment at one time point.

In fact the whole thrust of Walker et al. is towards this judgment about whether the current measurement is indicative of an anomaly (in which case a physician should be contacted). The discussion of the prior art emphasizes at column 1, lines 51-63 that the objective of the system is to “make a preliminary decision about whether or not an expert, such as a physician, should be contacted and to decide which physician or physicians to contact”. The summary of invention indicates at column 2, lines 11 and 12 that the method includes the step of “determining whether the received data is indicative of a physiological anomaly”. Column 4, lines 23-27 specify that “[t]he central server 200 examines the communicated data to determine if the at least one physiological parameter is within appropriate or ‘normal’ parameter boundaries”. If not, i.e., if an anomaly is present, then it communicates with a physician and may automatically call an ambulance.

Thus, Walker et al. is basically concerned with monitoring patients to detect “anomalies” and alert a physician so that the patient can be treated quickly. There is no disclosure in Walker et al. of trend analysis and that is because Walker et al. is concerned with trying to avoid a critical or fatal event. The trend analysis feature of claim 1 reflects the rather different emphasis of the claimed subject matter which is towards improving the day-to-day management of health

of people suffering from chronic health conditions. With the claim 1 system, the aim is not so much to detect and act in an emergency fashion upon “anomalies”, but instead to enable and empower the patient to improve their day-to-day control of their condition. That is why the claim 1 system uses a trend analysis whereas Walker et al. wants to look at a threshold judgment.

Third, Walker et al. also lacks the feature of claim 1 that the messages comprise “questions ... being changeable by automatic download controlled by the server in response to changes in the patient’s condition as measured by the electronic physiological acquisition unit”.

None of the sections of Walker et al. cited in the office action say that the questions in Walker et al. are changed in response to changes in the patient’s condition. The office action correctly notes that the system of Walker et al. does query the patient in response to certain alerts. The office action refers to column 8, lines 34-39 of Walker et al. which say:

[q]uery the patient as to the patient’s present activity (e.g. was patient climbing stairs, playing basketball, watching television and the like) R35.

But this section does not state that the question is changed in response to changes in the patient’s condition. Referring to Figure 3, in response to alerts R35 or R36 the contents of the “system reaction” table cell appear to be triggered, and both include “query patient as to activity level”. But there is no functionality in Walker et al. for the system to change the question itself, namely the content of the table cell in Figure 3. Further, there is no hint in Walker et al. that the questions could be changed depending on the particular measurements made. The contents of the cells in Figure 3 are fixed.

Thus although the Walker et al. can be said to include a message generator and to query the patient, Walker et al. does not provide for the questions themselves to be changeable by automatic download in response to changes in the patient’s condition. This is a clear difference and clear advantage of the claimed system over the system of Walker et al.

Schulze et al. does not add these features to Walker et al. and Applicant therefore respectfully submits that claim 1 is patentably distinguished over the proposed combination of Walker et al. and Schulze et al.

Claim 36 and claim 37 include the three features above which are not disclosed in Walker et al. and Schulze et al. and thus claims 36 and 37 are believed patentably distinguished over these documents for the same reasons.

TARASSENKO et al.  
Appl. No. 10/528,365  
Response to Office Action dated April 1, 2009

The dependent claims are believed allowable at least as being dependent from an allowable independent claim. Among other things, neither Haller et al. (U.S. Patent Publication No. 2002/0052539) nor Baker Jr. et al. (U.S. Patent No. 5,853,364) remedy the deficiencies of Walker et al. and Schulze et al. with respect to the independent claims.

Reconsideration and favorable office action are respectfully requested.

Respectfully submitted,

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